IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9639 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RB JOSHI & 1 - Petitioner(s)
Versus
PROJECT OFFICER CUM TALUKA DEVLOP OFFICER & 2 - Respondent(s)

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Appearance :

MR DR BHATT for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2,
MR RA MISHRA for Respondent(s) : 1 - 2.
MR DA BAMBHANIA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for an appropriate writ, direction and/or order quashing and

setting aside the circular dated 23-1-1991 (Annexure C). It is also further prayed for an appropriate order of quashing and setting aside the orders at Annexure A collectively issued by respondent No.1 inter alia seeking to recover Non Practicing Allowance (NPA) already paid to the petitioners from their salaries.

It is required to be noted and is not in dispute that NPA already paid to the petitioners have not been recovered. An affidavit-in-reply is filed on behalf of the respondent Taluka Development Officer pointing out that pursuant to the resolution dated 23-1-1991, audit objection was raised regarding the payment of the NPA to the petitioners and since the petitioners did not pay the same, it became PRC para and thereafter the representation was made to the State Government for reconsideration of the resolution and therefore, the amount was not recovered. It is also further submitted in the reply that thereafter, by resolution dated 11-9-1997, the earlier resolution dated 21-8-1991 was modified and the amount of NPA to the Medical Officer which was payable from the pay scale of Rs.2200 to Rs.2999 was changed to less than Rs.3000/- and the allowance was payable from 28-1-1999. It is also further submitted that

thereafter by another emergency circular dated 5-1-1998 again the modification was to be given effect from 1-12-1990. It is therefore, submitted that in view of the subsequent changes, the petitioners are not required to refund any amount paid to them as NPA as per Annexure A collectively dated 30th September 1996.

Under the circumstances and in view of the subsequent changes and the resolutions and in view of the affidavit-in-reply dated 15-11-2006, the notice dated 30th September 1996 have become infructuous and/or have become ineffective and therefore, no further order is required to be passed by this Court. Rule discharged. No costs.

(M.R.SHAH,J.)

shekhar/-